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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,359	09/04/2003	Jerry D. Coombs	31118-US-03	7837

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PEACOCK MYERS, P.C.
201 THIRD STREET, N.W.
SUITE 1340
ALBUQUERQUE, NM 87102

EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,359

Applicant(s)

COOMBS ET AL.

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on June 28, 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

The indicated allowability of claim 10 is withdrawn in view of newly discovered reference(s). Rejections based on the newly cited reference(s) follow.

Claim Objections

Claim 9 is objected to because of the following informalities: Line 12 begins with a capital letter when each claim should begin with a capital letter and end with a period. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 15-16, "each intersection" lacks antecedent basis within the claim. It is therefore not clear as to what "each intersection" refers. Lines 16-17, "the opposite ends" lacks antecedent basis within the claim. It is therefore not clear as to what "the opposite ends" refers. Applicant may wish to amend lines 15-16 of claim 1 to read, --attached at each intersection between the vertical and horizontal wires and arranged to form a grid--. Applicant may wish to amend lines 16-17 of claim 1 to read, --adjacent the opposite ends thereof-- so as to make clear that it is the opposite ends of the horizontal wires to which the metal strips are welded.

Claim 7, it is not clear as to what is being defined by “a metal strip on each plane adjacent the intersection”. Would this be the same metal strip as had been introduced in claim 1? And, the recitation “parallel to the exterior surface of” appears incomplete. To what is the “metal strip” parallel? Or, in other words, the exterior surface of what? Further, it is not understood how a portion of the metal strip receives concrete.

Claim 9, lines 5-6 recite “an equidistant right angle on each end of each horizontal wire, positioned such that each right angle bend...”. However, it is not understood how an angle can be equidistant. And is “right angle” as recited in line 5 the same as “right angle bend” recited in line 6 of claim 9? Perhaps claim 9 should be amended to recite --right angle bend-- in line 5 so as to provide for consistent terminology. Line 16, to what does “right angle” refer? Would this be the same “right angle” presented at line 5 of claim 9? Lines 18, to what does “such right angle” refer? Would this be the same “right angle” presented at line 5 of claim 9? Further, it is not clear as to what is being defined by “...the exterior surface of the panel wherein such right angle is disposed”. How is the “right angle” disposed in or within the “exterior surface” of the panel?

Claim 11, lines 6-7 recite “an equidistant right angle on each end of each horizontal wire, positioned such that each right angle bend...” However, it is not understood how an angle can be equidistant. And is “right angle” as recited in lines 6-7 the same as “right angle bend” recited in line 7 of claim 11? Perhaps claim 11 should be amended to recite --right angle bend-- in lines 6-7 so as to provide for consistent terminology. Line 16, to what does “right angle” refer? Would this be the same “right

angle' presented at line 6 of claim 11? Line 18, to what does "such right angle" refer? Would this be the same "right angle' presented at line 6 of claim 11? Further, it is not clear as to what is being defined by "...the exterior surface of the panel wherein such right angle is disposed". How is the "right angle" disposed in or within the "exterior surface" of the panel?

Claim 17, it is not clear as to what is being defined by "...the exterior surface of the panel wherein such right angle is disposed". How is the "right angle" disposed in or within the "exterior surface" of the panel?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Miller '794.

Miller '794 discloses, Fig. Figs. 1 and 2 and at col. 4, lines 15-19, an insulated concrete form comprising first and second substantially opposing panels P_1 P_2 , each panel having a top surface, bottom surface, first end surface, second end surface, an exterior

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surface defining a wall and an interior surface for receiving concrete; and at least two ties G for interconnecting the first and second substantially opposing panels, each tie having a plurality of horizontal wires 22 and a plurality of vertical wires (24, 26 when oriented vertically as is disclosed at col. 4, lines 15-19), wherein each horizontal wire in a tie touches and is fixed to each vertical wire in the tie, col. 3, line 47.

Claims 11-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 1-9 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



M. Safavi
August 31, 2006

MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 3673